



Reprinted
March 17, 2015

ENGROSSED HOUSE BILL No. 1065

DIGEST OF HB 1065 (Updated March 16, 2015 2:21 pm - DI 104)

Citations Affected: IC 16-18; IC 16-42; IC 25-22.5.

Synopsis: Use of investigational drugs, biological products, and devices. Provides that a manufacturer of an investigational drug, biological product, or device may make the drug, biological product, or device available to a patient who meets certain requirements. Adds to the requirements concerning experimental or nonconventional medical treatment and the authority to allow a patient to receive an experimental or nonconventional medical treatment if a physician determines that the patient: (1) has been diagnosed with a terminal disease or condition; and (2) does not have comparable or satisfactory treatment options. Specifies that a new cause of action is not created. Makes a technical correction.

Effective: Upon passage.

Culver, Davisson, Brown C, Clere
(SENATE SPONSORS — CHARBONNEAU, MILLER PATRICIA, BREAUX,
GROOMS, PERFECT)

January 6, 2015, read first time and referred to Committee on Public Health.

February 5, 2015, amended, reported — Do Pass.

February 9, 2015, read second time, ordered engrossed. Engrossed.

February 10, 2015, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

February 24, 2015, read first time and referred to Committee on Health & Provider Services.

March 12, 2015, amended, reported favorably — Do Pass.

March 16, 2015, read second time, amended, ordered engrossed.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1065

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-193.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 193.5. "Investigational drug,**
4 **biological product, or device", for purposes of IC 16-42-26, has the**
5 **meaning set forth in IC 16-42-26-2.**

6 SECTION 2. IC 16-18-2-302 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 302. **(a)** "Qualified
8 patient", for purposes of IC 16-36-4, has the meaning set forth in
9 IC 16-36-4-4.

10 **(b) "Qualified patient", for purposes of IC 16-42-26, has the**
11 **meaning set forth in IC 16-42-26-3.**

12 SECTION 3. IC 16-42-26 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]:

15 **Chapter 26. Drugs: Investigational Drug, Biological Product, or**

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1 **Device**

2 **Sec. 1. (a) This chapter does not affect IC 5-10-8-15,**
 3 **IC 12-15-5-9.2, IC 27-8-25, or IC 27-13-7-20.2.**

4 **(b) This chapter does not require a manufacturer to make**
 5 **available any investigational drug, biological product, or device.**

6 **Sec. 2. As used in this chapter, "investigational drug, biological**
 7 **product, or device" means an investigational or experimental:**

8 **(1) drug;**

9 **(2) biological product; or**

10 **(3) medical device;**

11 **that has successfully completed Phase I of a federal Food and Drug**
 12 **Administration approved clinical trial, but has not been approved**
 13 **for general use by the federal Food and Drug Administration and**
 14 **remains under investigation in a clinical trial.**

15 **Sec. 3. As used in this chapter, "qualified patient" means a**
 16 **patient who meets the requirements under IC 25-22.5-1-2.1(a).**

17 **Sec. 4. (a) A manufacturer of an investigational drug, biological**
 18 **product, or device may make available the investigational drug,**
 19 **biological product, or device to a qualified patient.**

20 **(b) A manufacturer may do any of the following:**

21 **(1) Provide an investigational drug, biological product, or**
 22 **device to a qualified patient without receiving compensation.**

23 **(2) Require a qualified patient to pay the costs of or associated**
 24 **with the manufacture of the investigational drug, biological**
 25 **product, or device.**

26 **Sec. 5. This chapter does not create a cause of action against a**
 27 **manufacturer of an investigational drug, biological product, or**
 28 **device for any harm to a qualified patient resulting from use of an**
 29 **investigational drug, biological product, or device.**

30 **SECTION 4. IC 25-22.5-1-2.1 IS AMENDED TO READ AS**
 31 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1. (a) An**
 32 **individual who consents under IC 34-18-12 may receive any**
 33 **experimental or nonconventional medical treatment if:**

34 **(1) a licensed physician has personally examined the individual**
 35 **and agrees to treat the individual;**

36 **(2) the treating physician determines:**

37 **(A) there is no reasonable basis to conclude that the medical**
 38 **treatment, when administered as directed, poses an**
 39 **unreasonable and significant risk of danger to the individual**
 40 **receiving the medical treatment; or**

41 **(B) the:**

42 **(i) individual has been diagnosed with a terminal disease**



or condition and does not have comparable or satisfactory treatment options that are approved by the federal Food and Drug Administration and that are available to diagnose, monitor, or treat the individual's disease or condition; and

(ii) probable risk to the individual from the experimental or nonconventional medical treatment is not greater than the probable risk from the individual's disease or condition; and

(3) the treating physician has provided the individual with a written statement and an oral explanation of the medical treatment that the individual has acknowledged by the individual's signature or the signature of the individual's legal representative and that discloses the following:

(A) That the medical treatment is experimental or nonconventional.

(B) That the **investigational drug, biological product, or medical device (as defined in IC 16-42-26-2)** has not been approved by the ~~United States~~ federal Food and Drug Administration for any indication.

(C) The material risks generally recognized by a reasonably prudent physician of the medical treatment's side effects.

(D) An explanation of the medical treatment, including expected frequency and duration of the treatment.

(b) If the medical treatment is to be provided on an inpatient or outpatient basis at a hospital licensed under IC 16-21, then that type of treatment must have been approved by the governing board of the hospital or by a ~~committee~~ **committee** of the hospital authorized by the governing board to approve the types of experimental or nonconventional medical treatments that may be provided at the hospital on an inpatient or outpatient basis.

(c) The medical licensing board shall develop protocols for medical treatments that are provided in a setting other than the inpatient or outpatient hospital setting specified in subsection (b). A physician who fails to comply with a protocol developed under this subsection shall be subject to discipline by the medical licensing board.

(d) This section does not require any person or organization to provide an individual with access to a medical treatment not otherwise commercially available to that individual.

(e) This section does not require:

(1) an insurer;

(2) a fraternal benefit society;



1 (3) a nonprofit corporation;

2 (4) a health maintenance organization (as defined in
3 IC 27-13-1-19);

4 (5) a preferred provider arrangement under IC 27-8-11; or

5 (6) a limited service health maintenance organization (as defined
6 in IC 27-13-34-4);

7 to provide coverage or make payment beyond the terms and conditions
8 of the contract for medical treatment authorized under this section.

9 **(f) This section does not create a cause of action against a health**
10 **care provider involved in connection with the use of an**
11 **investigational drug, biological product, or device by a patient for**
12 **any harm to the patient from the investigational drug, biological**
13 **product, or device.**

14 SECTION 5. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1065, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 22 and 23, begin a new line double block indented and insert:

"(D) An explanation of the medical treatment, including expected frequency and duration of the treatment."

Page 4, after line 6, begin a new paragraph and insert:

"(f) This section does not create a cause of action against a physician, pharmacist, or hospital for the use of an investigational drug, biological product, or device by a patient for any harm to the patient from the investigational drug, biological product, or device."

and when so amended that said bill do pass.

(Reference is to HB 1065 as introduced.)

CLERE

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1065, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 10, delete "physician, pharmacist, or hospital for" and insert **"health care provider involved in connection with"**.

and when so amended that said bill do pass.

(Reference is to HB 1065 as printed February 6, 2015.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1065 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 4 with "[EFFECTIVE UPON PASSAGE]".

Page 4, after line 13, begin a new paragraph and insert:
"SECTION 5. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1065 as printed March 13, 2015.)

CHARBONNEAU

